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OFFICE OF PETITIONS

In re Application of
Tahara et al.
Application No. 10/648,341
Filed: August 27, 2003
Attorney Docket No. 07553.0024-01

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ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(3), filed on April 12, 2005, to accept an unintentionally delayed claim under 35 USC 120 for the benefit of prior- filed nonprovisional Application 09/893,628 filed June 29, 2001.

The petition is **Dismissed As Moot**.

A petition under 37 CFR 1.78(a)(3) is only applicable to those applications filed on after November 29, 2000.

Along with the instant petition under 37 CFR 1.78(a)(3), petitioner has submitted an amendment to the first sentence of the specification following the title to include a reference that includes the relationship to the prior- filed application.

The instant pending nonprovisional application was filed on August 27, 2003 and was pending at the time of the filing of the instant petition. While a reference pursuant to 37 CFR 1.78(a)(2)(i) requires that any nonprovisional application must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the application to the prior-filed application was not included in the ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter filed with the above-identified application.

The current procedure where a claim for priority under 37 CFR 1.78(a)(3) is not

included in the first sentence of the specification or in the ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim of priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78 (a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior filed application set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim of priority under 37 CFR 1.78 (a)(3).

In view of the above, the \$1370 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

This application is being forwarded to the examiner of Technology Center Art Unit 2857 for further processing.

Telephone inquiries concerning this matter may be directed to Charlema R. Grant at (571) 272-3215.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks
Petition Examiner
Office of Petitions